



June 2, 2023

VIA ECF

Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *In re Search Warrant dated November 5, 2021*, Case No. 21-MC-00813 (AT)

Dear Judge Torres,

We write on behalf of proposed amici American Civil Liberties Union (“ACLU”), Freedom of the Press Foundation (“FPF”), and Foundation for Individual Rights and Expression (“FIRE”). Amici respectfully move for leave to file the accompanying amici curiae letter in support of neither party in regards to Petitioner’s Objections to Report and Recommendation of Special Master – Public Portion, Doc. 137. Counsel for proposed amici emailed the parties’ respective counsel on May 31, 2023 to request their positions on this motion. The Government, Petitioners Project Veritas, James O’Keefe, and Spencer Meads, and Intervenor Reporters Committee for Freedom of the Press do not oppose this motion. Counsel for proposed amici have not received a response from Petitioner Eric Cochran.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws. The ACLU frequently appears in courts throughout the countries, as counsel to parties or as *amicus*, to defend the press’s right to publish, and the public’s right to receive information and ideas, free from government interference. *See, e.g., Bartnicki v. Vopper*, 532 U.S. 514 (2001); *N.Y. Times Co. v. United States*, 403 U.S. 913 (1971) (per curiam); *Democratic Nat’l Comm. v. Russian Fed’n*, 392 F. Supp. 3d 410, 434 (S.D.N.Y. 2019). The ACLU previously filed an amicus letter-brief in support of Intervenor Reporters Committee for Freedom of the Press’s Objections to Magistrate Judge Cave’s Opinion and Order of December 7, 2021, Doc. 49. The proper resolution of this dispute is a matter of significant interest to the ACLU and its members.¹

The Freedom of the Press Foundation (“FPF”) is a nonprofit organization that protects, defends, and empowers public-interest journalism. The organization works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including the development of encryption tools, documentation of attacks on the press, training newsrooms on

¹ The ACLU’s New York affiliate, the New York Civil Liberties Union, is not a party to this motion or the proposed amici letter-brief.

digital security practices, and advocating for the public’s right to know. Protecting journalists’ right to obtain, possess and report on source documents is central to FPF’s mission.

The Foundation for Individual Rights and Expression (“FIRE”) is a nonpartisan nonprofit dedicated to defending the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended individuals’ rights through public advocacy, strategic litigation, and participation as amicus curiae in cases implicating expressive rights under the First Amendment. *See, e.g.*, Brief of FIRE as Amicus Curiae in Support of Petitioner and Reversal, *Counterman v. Colorado*, No. 22-138, filed March 1, 2023; Brief of FIRE as Amicus Curiae in Support of Petitioner, *Novak v. City of Parma*, No. 22-293, petition for cert. filed Sep. 26, 2022; Brief of FIRE as Amicus Curiae in Support of Plaintiffs-Appellants & Reversal, *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038 (2021).

FIRE has a direct interest in this case because this Court’s jurisprudence on press freedom impacts the individuals FIRE represents. FIRE regularly represents citizen and student journalists that face government censorship or sanctions for their protected reporting. *See, e.g.*, Consent Decree, *Nally v. Pfeiffer*, No. 2:21-cv-02113 (D. Kan. Feb. 8, 2022); *Villarreal v. City of Laredo*, 17 F.4th 532 (5th Cir. 2021), *withdrawn and superseded by* 44 F.4th 363 (5th Cir. 2022), *reh’g en banc granted, opinion vacated*, 52 F.4th 265 (5th Cir. 2022). FIRE joins this brief in support of neither party to urge this Court to hold that the First Amendment protects the right of the press to possess and receive expressive materials related to matters of public concern, even when those materials were unlawfully obtained by a third party.

We appreciate the Court’s attention to this matter.

Respectfully submitted,

s/ Brian Hauss

Brian Hauss

Brett Max Kaufman

American Civil Liberties

Union Foundation

125 Broad Street, 18th Floor

New York, New York 10004

(212) 549–2500

bhauss@aclu.org

bkaufman@aclu.org

Counsel for Proposed Amici Curiae

CC: All Counsel of Record (ECF)